UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(RH 1341)
(KN 6601)
(ZC 5946)

- -X
UNITED STATES OF AMERICA,

Plaintiff,

- against-

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, et. al.,

Defendants.
- -X

DECLARATION OF KATHLEEN A. NANDAN

Civil Action No. CV-05-3212

(Glasser , J.)
(Pohorelsky, M.J.)

KATHLEEN A. NANDAN, duly deposes and says:

1. I am an Assistant United States Attorney in the office of Roslynn R. Mauskopf, United States Attorney for the Eastern District of New York, attorney for plaintiff United States of America in this action which has been brought pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et. seq. I respectfully submit this declaration pursuant to Rule 56(f) of the Federal Rules of Civil Procedure in opposition to the motion of Defendant Robert E. Gleason, filed pursuant to Rule 56(b), in which certain other Defendants have joined. This Declaration is also submitted in opposition to motions of certain Defendants that have been brought pursuant to Rule 12(b)(6) to the extent that these motions rely on facts and information that are not set forth in the Complaint in this action, as amended. This declaration explains why discovery is needed in order to permit the United States an opportunity to fully respond to Defendants' motions and will discuss: (1) what facts are sought and how they are to be obtained; (2) how those facts are reasonably expected to raise a

genuine issue of material fact; (3) what efforts the party has made to obtain those facts; and (4) why those prior efforts were unsuccessful.

I. The United States' Unsuccessful Efforts to Obtain Deposition Discovery

2. The United States filed the Complaint in this action on July 7, 2005. Annexed hereto as Exhibit A is a copy of the docket sheet printed from the Court's PACER system. Briefly, the Complaint alleges that certain Defendants, including members and associates of La Cosa Nostra ("LCN") and high-ranking officials of the International Longshoremen's Association (the "ILA") have conspired to and conduct the affairs of, and acquire and maintain an interest in, the Waterfront Enterprise, in violation of RICO.

. 3. Because of the pending trial in United States v. Coffey, CR-04-140 (Glasser, J.), the parties entered into stipulations expressly contemplating an amendment to the Complaint and extending the Defendants' time to answer or otherwise respond to the Complaint.

4. Before trial in Coffey commenced, Albert Cernadas, the Executive Vice President of the ILA who was a defendant in Coffey as well as a Defendant in this action, pleaded guilty to fraud conspiracy. He also entered into a Consent Judgment and Decree in this action, settling all claims against him. Exhibit A, Dkt. No. 5.

5. The United States filed the Amended Complaint on February 21, 2006. Exhibit A, Dkt. No. 49.

6. An initial conference was held on February 22, 2006. Id., Dkt. No. 57. At the conference, the United States requested that discovery, including deposition discovery, proceed. The Defendants opposed the request for deposition discovery. In response, the United States noted that George Barone, an important witness, was both elderly and in ill-health. At the

conclusion of the conference, at the Defendants' request, deposition discovery was stayed pending further order of the Court. A copy of the Court's ruling from the February 22nd conference is annexed hereto as Exhibit B.

7. On February 23, 2006, the United States submitted a letter reiterating its position with respect to a stay of discovery and the law in support thereof. A copy of this letter is annexed hereto as Exhibit C. On March 8, 2006, the United States submitted another letter, advising the Court that Barone had recently collapsed and had been taken by ambulance to the hospital. A copy of this letter is annexed hereto as Exhibit D.

8. In response to the United States' March 8th letter, the ILA, METRO, and the METRO-ILA Funds (METRO and the METRO-ILA Funds are collectively referred to herein as the "METRO Defendants") opposed the taking of Barone's deposition. The ILA and the METRO Defendants filed letters of objection dated March 15, 2006. In a letter dated March 17, 2006, MILA joined the ILA and the METRO Defendants in their objection. Copies of these letters are annexed hereto as Exhibit E.

9. The United States submitted another letter on March 24, 2006, in further support of its application to proceed with Barone's deposition. A copy of that letter is annexed hereto as Exhibit F.

10. Later that day, the Court issued an order finding that the United States had made a substantial showing that Barone's deposition was warranted. The Court further ordered that the deposition be conducted at the earliest time possible, on or after May 1, 2006, provided that the United States gave at least twenty days' notice. A copy of this order is annexed hereto as Exhibit G.

11. On May 12, 2006, the United States issued notice of its intention to conduct Barone's deposition. The deposition commenced on June 12, 2006 and concluded on June 30, 2006. Relevant portions of the deposition transcript ("Barone Dep.") are annexed hereto as Exhibit H.

12. By letters dated June 5, 2006, MILA and the METRO Defendants requested that the stay of deposition discovery remain in place. Copies of their letters are annexed hereto as Exhibit I. That same day, the United States reiterated its request that discovery proceed. A copy of the United States' letter is annexed hereto as Exhibit J. By order dated June 6, 2006, the Court continued the stay of deposition discovery. A copy of the Court's order is annexed hereto as Exhibit K. The Court also indicated that it would re-evaluate the propriety of the stay upon submission of the United States' opposition to the Defendants' motions to dismiss and for summary judgment.

13. Since the filing of the Amended Complaint, the parties have exchanged written discovery demands and produced documents. The United States acknowledges its continuing obligation to produce relevant and responsive documents.

II. The Need for Discovery

14. In their motions to dismiss the Complaint and for summary judgment, the Defendants make a number of arguments, both referencing documents outside of the four corners of the Complaint and raising issues to which the United States cannot properly respond absent further discovery.

15. Defendant John Bowers, President of the ILA, argues that he cannot be considered a co-conspirator because he is instead a victim of LCN's influence on the Waterfront.

Likewise, the other Defendants argue that they simply had no involvement with LCN or the Waterfront Enterprise. None of these Defendants have been deposed, nor has any witness other than Barone, despite the fact that the Defendants have identified scores of individuals likely to have discoverable information. Specifically, in their disclosures made pursuant to Rule 26 of the Federal Rules of Civil Procedure, MILA has listed forty-four individuals; the METRO Defendants over forty-five; and the ILA over seventy-one potential witnesses. Copies of these disclosures are annexed hereto as Exhibits L, M, and N respectively.

A. Discovery Regarding ILA Officer Defendants

16. As alleged in the Complaint, top ILA officials, including Bowers, Coffey, Daggett, and Gleason, receive considerable salaries from their positions, positions that the United States maintains they acquired only with the support of organized crime. In their motions, these defendants make fact-based arguments that they are not associates of organized crime. Bowers in particular maintains that he has been a victim of organized crime. The depositions of these Defendants must go forward so that the United States can ascertain the bases for these contentions. The current record indicates that there are no bases and that the Defendants have actively bargained with the mob and negotiated certain benefits. For example, Barone explained that, sometime in the late 1990s, he intervened on Bowers' behalf when Anthony Ciccone, a Gambino captain and former ILA official of whom Bowers was fearful, harassed Bowers. Barone Dep. at 169:8-171:23. As he explained in his deposition, Barone intervened on Bowers' behalf:

> Bobby Gleason told Jimmy [Cashin] that Ciccone was constantly bothering John [Bowers] and John was deathly afraid of him. He said – Bobby Gleason said to Jimmy, I told John and I'm telling

> you that the only person can straighten this out is George, the only one who can protect John is George. And I did.

Id. at 171:16-21. Barone helped Bowers because Bowers "was with [him] and because he was being . . . threatened by a member of another gang, another family, and it was detrimental to our best interest." Id. at 229:6-10. Bowers later relayed to Cashin that he was "relieved" to have Barone's protection. Id. at 230:9-16. Further, as the Complaint makes plain, Bowers agreed to the mob's demands upon him with respect to the Daggett selection scheme in exchange for a promise that LCN would look after his son. AC, Exhibit 2 at ¶ 19.

17. In exchange for the salary and benefits, the Defendant ILA officials have been expected to serve the mob's interests. As Barone testified:

> Q. In addition to salaries, do the top officers of the international of the ILA receive pension benefits?
>
> A. Yes, very lucrative benefits.
>
> Q. Do they receive health care benefits?
>
> A. Yes, benefits, yes.
>
> * * *
>
> Q. Has the Genovese family expected top officials of the International Longshoremen's Association to do things for the Genovese family?
>
> A. Absolutely. That's what they had me there for too.
>
> MR. WING: Objection.
>
> Q. Does that include Mr. Bowers?
>
> MR. MURRAY: Objection.
>
> A. Yes.
>
> Q. Does that include Mr. Cernadas?

A. Yes.

MR. MURRAY: Objection.

Q. Does that include Mr. Gleason?

A. Yes. You're talking about Bobby Gleason?

Q. Yes.

A. Robert Gleason?

Q. Yes, sir.

A. Go ahead.

Q. Does that include Mr. Daggett?

MR. DAGGETT: Objection.

A. Yes.

Barone Dep. 252: 2-7, 252:15-253:13.

Q. Is the point, sir, that these officials of the ILA get to have their jobs and get to make their salaries provided they do things for the Genovese family or the Gambino family?

MR. WING: Objection.

MR. CARUSO: Objection.

MR. MURRAY: Objection.

MS. HARKER: Objection.

A. Yes.

Q. It's a deal, isn't it?

MR. CARUSO: Objection.

MR. WING: Objection.

MR. DAGGETT: Objection.

A. Of course it's more than a deal, it's an order. It's a prerogative [sic]. It's a passage to the occupying of that office.

Barone Dep. 254:21 - 255:12; see also id. at 243-46 (asserting that none of the top six ILA officials would have been elected without LCN's support). Barone also explained that Defendant Arthur Coffey would not have become president of Local 1922 without the mob's backing. Id. at 232-33. As Barone put it, failure to abide by the mob's wishes translated into a loss of position, power, and prestige: "We get rid of them. We either not support them or we chase them or we get rid of them, they disappear, or whatever – they just don't occupy that job anymore." Id. at 263:22-264:16.

18. Barone confirmed that organized crime has long dominated the Waterfront. He testified that his old street gang met at the ILA offices in Greenwich Village in the 1950s, Barone Dep. at 117:17-118:7, and he explained how Bowers' presidency represented a continuation of mob control of the Waterfront dating back decades. He testified that control of John Bowers had been transferred from the Irish gangsters (including Bowers' father, Mickey Bowers) that had originally controlled the Waterfront to the Genovese family, as represented by Barone and his Waterfront partner, Douglas Rago, who, like Barone, was a made member of the Genovese family and a former ILA official. In Barone's words:

Q. Mr. Barone, you testified that in your discussions with Mr. Rago, you and Mr. Rago discussed a meeting that he had with Mr. Bowers and Eddie McGrath.

A. Yes.

> Q. And during that meeting Mr. McGrath told Mr. Bowers that he would have to work with certain people.
>
> MR. WING: Objection.
>
> A. Yes.
>
> Q. What people was Mr. McGrath talking about?
>
> A. They were talking about Douglas Rago and me and the -- our family, the Genovese family.
>
> Q. Mr. Barone –
>
> A. Can I continue?
>
> Q. I'm sorry, sir, I apologize.
>
> A. There was this meeting, yes, Rago told me about this meeting, I was in jail. It was concerning John Bowers to becoming the president of the International Longshoremen's Association – international office. McGrath told Bowers that he was old, he wouldn't be around that long and that since he had promised Bowers' father, Mickey Bowers, that if anything ever happened to Mickey, he would take care of John, and he said that's what I'm doing but I'm not going to be here. But that's how it is now, John, these people are there and you have to work with them and they have to work with you. A relationship specifically subject of the support for Bowers to become the president of the international, period. I'm finished, at that moment.

Barone Dep. at 240:13-241:21. See also id. at 243:20-244:3 (noting that, if not for McGrath's promise, Cernadas might have become president because of his support within the Genovese family).

19. Barone's account of the ILA's history and the effect of that history on present day operations strongly supports the allegations in the Complaint and thus highlights the need for testimonial discovery. Barone described former ILA President Teddy Gleason as a Genovese associate whom Barone liked and respected. He explained, "Bobby Gleason was

Teddy Gleason's son. The kid walked into the job because of his father, a very nice boy, I know him since the day he's born, very nice boy." Barone Dep. at 1111:22-25. Barone elaborated, "[Gleason's] father was dead[,] his father was so well-respected Bobby was a friend by it. He was the kid that we knew, he was tuned into us but if he wasn't someone that would not serve in our best interest if necessary he wouldn't be there." Id. at 246:2-11. Barone also made clear that Gleason knew of the mob's domination of the Waterfront and that he was amenable to it. According to Barone, although the mob did not turn to Gleason frequently, Gleason "was in the mud with the rest of us." Id. at 1111:25-1112:3. When specifically asked if Gleason was "with" Barone, Barone responded, "I expected that he was. I say he was." Id. at 1569:24. See also id. at 1595:11-14 ("[Gleason] was with me and always was acceptable to anything I would ask him to do"). Indeed, Gleason's position with the ILA was no coincidence: he "walked into the job" with the mob's blessing, based in part, because of its respect for Gleason's father and understanding that Gleason would do as it wished.

20. In addition to these statements demonstrating that the Genovese family had influence over Gleason, Barone identified specific instances in which Gleason acted on Barone's behalf. For example, Gleason was approached to support Daggett's elevation to the Executive Board. Barone Dep. 1511:9-15; 1569:15-19, and Gleason complied. See id. at 444:2-7. In 1999, Gleason also reserved a room for Barone at the Downtown Athletic Club ("DAC") when Barone traveled to New York to meet with Genovese soldiers and associates Ernest Muscarella, Pasquale Falcetti, and Charles Tuzzo to discuss Genovese family business. Barone Dep. at 191:16-192:5.

21. Barone also testified that, after a discussion with Cashin, he learned that Gleason was not interested in succeeding Bowers as president of the ILA. Barone Dep. at 441:12- 442:11. The question of who would one day replace Bowers at the head of the ILA was of vital importance to the Genovese family. Gleason's decision meant that the Genovese family would "put forth Harold Daggett. It gave me [Barone] the opportunity to talk to Andrew [Gigante], or the other captains involved. And I did, I got all of them to agree with me to then go for Mr. Daggett." Id. at 1511:3-8. Barone then asked Cashin to 'ask' Gleason for his support of Daggett. "Jimmy [Cashin] did that and Bobby [Gleason] said fine, he didn't want the job and he would support Harold, whatever George wanted." Id. at 444:5-7.

22. At his deposition, Barone also discussed organized crime's ties to Daggett. He recalled a conversation that he had with Andrew Gigante, convicted Waterfront mobster and son of Vincent "Chin" Gigante, former boss of the Genovese family, about the scheme to promote Daggett to the ILA presidency:

> Q. What, if anything, did Mr. Gigante, Andrew Gigante say [about promoting Daggett]?
>
> A. He was very happy to hear of that. He would support me in it and he wanted very much for Harold [Daggett] to succeed to that position of Bowers' presidency?
>
> Q. Did Andrew Gigante say why he was happy?
>
> A. He's with us. He's more with us and he's in -- he is the prime important guy in the local that has the most important relationship with the shipping industry, maintenance, repair and so on and so forth. The golden goose.
>
> Q. You are referring to Harold Daggett?
>
> A. Yes.

Barone Dep. at 442: 9-22.

23. After Barone's release from prison, he met with Daggett and others. For example, he had Cashin bring Daggett to meet him at trade conventions and arrange for meetings in the vicinity of ILA conventions. Barone Dep. at 386:8-21; 389:4-16.

24. At his deposition, Barone also explained that he generally communicated with the top ILA officials either through Cashin or Coffey. See e.g., Barone Dep. at 388:23-389:3. He typically relayed messages to Bowers and others through these intermediaries. Indeed, this testimony is corroborated by FBI 302s documenting interviews with Cashin and Coffey. Copies of the Cashin 302s are annexed hereto as Exhibit O. Copies of the Coffey 302s are annexed hereto as Exhibit P.

25. Cashin told the FBI that he arranged meetings for Barone with Falcetti and Gigante. Cashin-302_001. Cashin explained that he met with Bowers to discuss the MILA PBM contract and that Bowers knew that Barone, a member of the Genovese family, had sent Cashin to get Bowers' endorsement. Cashin-302_009.[1] Cashin also implicates other ILA International Vice Presidents, Stephen Knott and Ronald Capri, in the conspiracy to dominate the Waterfront. Cashin-302_007, 014. He confirms Barone's testimony that Larry Ricci and Tino Fiumara "controlled [Cernadas, former ILA Executive Vice President] on behalf of the Genovese LCN family." Cashin-302_008. See also Coffey-302_009 ("Coffey has heard rumors that Al Cernadas i[s] connected to Larry Ricci, an alleged mobster from New Jersey"). Cashin also

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[1] Notably, Barone denies having involved Bowers in this scheme. Barone's deposition testimony and the Cashin 302s therefore conflict, once again emphasizing the need to conduct additional discovery in this case, including the depositions of Bowers and Cashin.

provides independent corroboration of the ultimately unsuccessful scheme to have Tarangelo (the "Tax Doctor") manage funds on behalf of Local 1804-1. Cashin-302_015.

26. Coffey confirmed Barone's account when he told the FBI that he arranged meetings between Barone and Falcetti and that he had frequent contact with Cashin. Coffey-302_003-4. However, he gave conflicting accounts of the Smith and Wollensky meeting between Bowers and Barone at which Barone sought Bowers' support for Daggett's elevation to the Executive Board and, ultimately, the presidency. Compare Coffey-302_001, 003, and 007-8. This underscores the need to obtain sworn testimony from Coffey in this proceeding.

27. At his deposition, Barone also described nominal Defendant Benny Holland's relationship with the Gambinos and his election to the Executive Board:

> . . . Mr. Holland evidently -- Mr. Holland succeeded Buddy Raspberry who passed away. It was not known at that time that Sonny Ciccone had the same influence with him, though I did suspect it because Buddy Raspberry was under the relationship with Anthony Scotto, that I know because Buddy Raspberry told me. Buddy Raspberry then dies and Benny Holland is elected. And that's Texas, that's down in Texas, you know. That's a difficult question. More than likely we would have objected if he was a real opponent, but probably not because he was with somebody anyway, which we eventually learned though I suspected early before Larry Ricci told me that Sonny Ciccone told him Benny Holland was with him specifically.

Barone Dep. at 252:10-25. Coffey also told the FBI that Holland is "connected to the Brooklyn mob," i.e., the Gambino family, through Buddy Raspberry (Holland's predecessor on the Executive Council) and Raspberry's friendship with Anthony Scotto. Coffey-302_009.

28. With regard to nominal Defendant Owens, Barone testified Owens "knows the group," and that he belongs to Tito's (Tino Fiumara's) group. Barone Dep. at 246:14-20.

B. Discovery Regarding Waterfront Businesses

29. The Complaint alleges that organized crime has profited from exercising its influence over Waterfront businesses. See, e.g., AC 215-19, 222-31. As set forth below, companies affiliated with members and associates of the Genovese and Gambino families have in some instances benefitted from the affiliation by obtaining lucrative contracts that might have been awarded to competitors had the mob not given its support to them. Organized crime has maintained its influence over companies by way of its control over the ILA by providing businesses with "labor peace." George Barone and others, including Liborio Bellomo, Andrew Gigante, and Thomas Cafaro, have aligned themselves with businesses operating in the Ports of New York and New Jersey, and Florida, including businesses owned and operated by Umberto Guido, former President of METRO.

30. The evidence adduced to date supports these allegations and emphasizes the need for discovery in this case. For example, Barone testified about organized crime's efforts to infiltrate the Florida ports and its relationship with New York/New Jersey businessmen Sal Catucci, Bert Guido, Joe Perez and other Waterfront businesses. According to Barone, Perez had a "monetary arrangement with us [the Genovese]." Barone Dep. at 223:2-4. Similarly, Guido and others paid for the opportunity to secure contracts and labor peace. Id. at 160:12-24.[2] In exchange, Barone protected Guido (and the businessmen) by "stepping in front of him and discouraging anyone to do anything that was not in Guido's best interest and not giving them anything, any favor, anything at all that would hurt his best interest of his company. Directly to

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[2] Notably, Andrew Gigante pleaded guilty to extorting Guido in the Bellomo case. AC Exhibit ¶ 44.

whoever it may have been." Id. at 224:13-18. Of course, no discovery has yet been had from Catucci, Perez, Guido, or other Waterfront businessmen.

31. In addition to obtaining money from Waterfront businesses through their shared control of the ILA, the Genovese and Gambino families have long exerted influence over METRO, the management association representing companies in the lucrative container repair industry that hire ILA workers from ILA Locals 1804-1 and 1814. As set forth below, each family has placed members and associates in positions in METRO and the METRO-ILA Funds, but the benefit contracts with the METRO-ILA Funds and the Florida ports have not been explored. These funds had contracts with ComPsych (and in some instances with HMC, the company with whom Cashin was employed before he joined ComPsych). The context for these contracts, at least one of which was in violation of Cashin's consent decree, must be developed, particularly in light of Barone's testimony that Cashin placed his insurance deals (which included the ComPsych deal) "on record" with Barone. Barone Dep. at 440:17-441:11.

C. Discovery Regarding METRO and the Funds

32. LCN's current ties to the METRO Defendants must be the subject of further discovery. Currently, Jerome Brancato and Joseph Ragusa, related respectively to convicted mobsters Jerome Brancato and Michael Ragusa, are employees of the METRO-ILA Funds. Genovese soldier Michael Ragusa was the Executive Director of the METRO-ILA Fringe Benefit Fund until his recent conviction. AC ¶ 39. His brother, Joseph Ragusa, is currently the Funds Administrator/Secretary with significant responsibilities to both METRO and the METRO-Funds. A copy of his job description is annexed hereto as Exhibit Q. According to Barone, Ragusa and others were placed in these positions by the Genovese family. Barone Dep.

at 259:10-24 (Bellomo placed Ragusa's brother, in METRO, and organized crime selected Barbera, a former METRO president). Also, co-conspirator Falcetti was, until his recent conviction, an officer of METRO, a management trustee of the Welfare Fund, and alternative trustee of the Individual Account Retirement Fund. Copies of the lists of METRO officers and trustees are annexed hereto as Exhibit R. Jerome Brancato, the son of Gambino family soldier and Defendant Brancato, is the METRO-ILA Funds Director. A copy of his job description is annexed hereto as Exhibit S. METRO and its funds share personnel and expenses and appear to be viewed at times as a single entity: a copy of proposed organization chart from 2002 is annexed hereto as Exhibit T. This chart demonstrates Joseph Ragusa's and Brancato's elevation shortly after their relatives' indictments and the close relationship between the organization allegedly created by Barone and its benefit funds.

33. The United States must be permitted to ascertain how Ragusa and Brancato acquired their positions and what they do for METRO and its funds. On the current record, there is strong reason to believe that these individuals got their jobs for the sole reason that they have ties to powerful members of organized crime, as has been the case in the past. And there is reason for concern that they are providing no meaningful services to the funds. According to Barone, convicted Genovese soldier Falcetti, though on METRO's payroll, did nothing. "He [Falcetti] hardly ever showed up like any of the rest of them, they were all a bunch of no shows. We put them there and nobody bothered them. They didn't do any work." Barone Dep. at 257:20-23. That said, according to documents produced by the METRO Defendants in discovery, Ragusa, Brancato, and Falcetti did attend fund meetings with Daggett.

34. Further, a review of the METRO Defendants' minutes, produced in discovery, and the filings by other Waterfront companies reveals documents littered with the names of those involved in the Waterfront Enterprise: Cashin, Buzzanca, Daggett, Gigante, Timpanaro, Longo, etc. Whether and to what extent Waterfront industry provides full employment to friends and family of LCN, and thus, whether and to what extent that industry is vulnerable to corruption, is a proper avenue for discovery.

D. Other Discovery

35. Many of the Defendants also challenge the Waterfront Enterprise alleged in the Complaint and argue that there can be no ongoing harm as the Waterfront mobsters have already been prosecuted. However, as the United States alleged in Bellomo, Vincent Gigante remained the boss of the Genovese family even while in prison, and Gigante later pleaded guilty to crimes related thereto. AC, Exhibit ¶ 44. Indeed, as Barone noted:

> Q. In your experience, if an organized crime member is in jail, is he still able to carry out organized crime's goals?
>
> MR. MARRINAN: Objection.
>
> MR. CARUSO: Objection.
>
> A. His father [Andrew Gigante's father, Vincent "Chin" Gigante] did it for years. Andrew would go see his father and he would come back with messages from his father on so on and so forth. Barney [Bellomo] did it when he sent word out that he wanted Ralphie killed through Peluso, the attorney. Yes, yes, yes, yes, they do, and probably will always continue to. Chin Gigante to the day he died was feared as the boss of the Genovese family and continuously through his brother, the priest, he sent messages out. Through the lawyers, through his son. And it's on record. It's on record, it's on tapes.

Barone Dep. at 492:11-493:4. As the racketeering Defendants remain in power, and as many others implicated in the Waterfront conspiracy (such as Knott, Capri, Catucci) remain on the

Waterfront, the United States should be entitled to conduct discovery regarding the mob's ongoing influence.

36. Likewise, although the Defendants challenge the scope of the relief sought, as counsel for the ILA elicited on Barone's cross-examination, the mafia's influence extends beyond the New York metropolitan area into smaller ports throughout the country:

> Q. What Genovese family member controls the locals in Canada?
>
> A. None. Canada doesn't mean anything at all. They're a zero.
>
> Q. How about Duluth?
>
> A. Who?
>
> Q. Duluth?
>
> A. Duluth, Chauncey was with us.
>
> Q. Chauncey was with you?
>
> A. Chauncey Baker, absolutely, he's been with us for years.[3]
>
> * * *
>
> Q. Mr. Barone, isn't it a fact that your knowledge of Genovese activity in the ILA relates to New Jersey, New York and Miami?
>
> MR. HAYES: Objection.
>
> A. No, sir, that's not true. Our relationship is for the whole ILA by virtue of the president of the ILA, executive vice presidents, general organizer, general first vice president of all the ILA. New York is the Big Apple. Everything after that is Bridgeport. The guys in the various of the locals look to John Bowers for guidance and we have him and we didn't need them. We had him. We had the executive vice president, et cetera, et cetera, et cetera. Canada is nothing. But if there was something in Canada we needed, we'd go to John [Bowers] to get it.

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[3] Chauncey Baker, named as a nominal defendant in this action, is an ILA Executive Board Vice-President and former member of the Great Lakes District Council.

Barone Dep. at 547:8-549:14. The scope of the mob's control is also an appropriate avenue for discovery.

37. The Defendants, specifically MILA and the ILA, argue that this Complaint is unnecessary because they have undertaken efforts at self-reform and implemented codes of conduct. The efficacy of these codes can be resolved through discovery only, including the depositions of those involved in the Defendants' alleged reform programs.

38. Several Defendants also carp about the supposed "unprecedented"nature of the relief sought in this action, particularly as it relates to the oversight of ERISA-regulated funds. The United States' requests for relief in this case are not unprecedented and have, in fact, been made before. A copy of the Demand for Relief Paragraph C in the complaint filed in United States v. Mason Tenders District Council of Greater New York, 94 CV 6487 (S.D.N.Y.) is annexed hereto as Exhibit U. The Mason Tenders complaint expressly requested that a court-appointed officer be given authority to prevent racketeering activity within; to discharge any of the duties and responsibilities of; to investigate and discipline agents of "the District Council, its constituent Locals and the Trust Funds; and petition the Court to obtain appropriate relief which is reasonably necessary to protect the rights of the members of the constituent Locals of the District Council and the beneficiaries of the Trust Funds." The demand is reiterated at paragraph 13 in the consent decree filed in that case, a copy of which is annexed hereto as Exhibit V (Mason Tenders Consent Decree paragraph 13, reprinted in, United States v. Mason Tenders Dist. Council of Greater New York, 1994 WL 742637, *11 (S.D.N.Y. Dec. 27 1994) ("[T]his Consent Decree is in full settlement and satisfaction of any and all civil claims by the

Government against the MTDC and the Trustees who are signatories below on account of the facts and events alleged in the Complaint . . . and such claims are discontinued with prejudice").

39. The United States Maritime Alliance, Ltd., an entity that is not a party and that was never threatened with litigation, wrote a letter to the Department of Justice asking that the United States reconsider filing this lawsuit. A copy of that letter is annexed hereto as Exhibit W. The United States must be permitted to explore why industry prefers that LCN associates remain in the union, why industry may be captive in organized crime's domination of the Waterfront.

40. Additionally, in at least one instance, counsel's cross-examination of Barone reflects that parties to this litigation have relevant documents which have not yet been produced to the United States. For example, while questioning Barone about a 1960s election contest between Bowers and Fred Fields,[4] ILA counsel intimated that it has documents related to Barone's historical account of LCN domination of the ILA:

> Q. Somebody could go back and take a look at the voting records, couldn't they and find out whether that's correct?
>
> A. You're talking about a long time ago, let's see 40 some years ago don't you have it there? Do you have the votes there?
>
> Q. I know the answer Mr. Barone.
>
> A. Huh.
>
> Q. I know the answer Mr. Barone.

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[4] As Barone explained, Fields was Genovese associate and former General Organizer eventually convicted of mail fraud.

Barone Dep. at 544:3-11. The United States does not "know the answer," and it should be permitted to discover it.

III. The Mail and Wire Frauds

41. In addition to the mailings and telephone calls alleged in the indictments in Bellomo and Gotti, which took place as part of the schemes alleged in the Complaint, the indictment in Coffey identifies as overt acts in the mail and wire fraud conspiracy several of the telephone calls and mailings made in furtherance of the scheme. AC Ex. 1, ¶¶ 18a-c.

42. Although the Defendants argue that the Complaint fails to provide the requisite particularity with the other fraud schemes, the evidence of mailings made in furtherance of these schemes alleged in the Complaint has been produced by the United States or is otherwise available to, or in the possession of, the Defendants. In addition to others, the following mailings took place in furtherance of the fraudulent award of the MILA mental healthcare contract to Compsych:

Approximate Date of Mailing	Addressee
January 19, 1999	John Bowers, President International Longshoremen's Association 17 Battery Place New York, N.Y. 10004
January 19, 1999	Mr. Bob Gleason, Secretary-Treasurer International Longshoremen's Association 17 Battery Place – 5th Floor New York, N.Y. 10004

Approximate Date of Mailing	Addressee
March 8, 1999	Bob Gleason, Secretary-Treasurer International Longshoremen's Association 17 Battery Place New York, N.Y. 10004
March 8, 1999	Al Cernadas, Executive Vice President – ILA President – Local 1235 30 Hennessey St. Newark, N.J. 07102
March 8, 1999	John Bowers, President International Longshoremen's Association 17 Battery Place New York, N.Y. 10004
April 5,1999	Bob Gleason, Secretary-Treasurer International Longshoremen's Association 17 Battery Place - 9th Floor New York, N.Y. 10004 and James A. Capo New York Shipping Association, Inc. Two World Trade Center New York, N.Y. 10048
December 3, 2001	Lou Valentino, Executive Director MILA 111 Broadway, 5th Floor New York, N.Y. 10006-1901

Approximate Date of Mailing	Addressee
April 7, 2004	Paul Coppola Administrator NYSA-ILA Medical Center of Newark 123-31 Clifford Street Newark, N.J. 07105

Copies of these documents are annexed hereto as Exhibit X.

43. In addition to others, the following mailing took place in furtherance of the fraudulent award of the METRO-ILA Welfare Fund's PBM contract to GPP/VIP:

Approximate Date of Mailing	Addressee
August 7, 1998	General Prescription Programs, Inc. 61 Freeman Street Newark, N.J. 07105

A copy of this document is annexed hereto as Exhibit Y.

44. In addition to others, the following mailings took place in furtherance of the fraudulent award of the METRO-ILA Welfare Fund's mental healthcare contract to Compsych:

Approximate Date of Mailing	Addressee
March 8, 1999	Harold Daggett, President Local 1804 International longshoremen's Association 5000 Westside Ave. North Bergen, N.J. 07047

Approximate Date of Mailing	Addressee
April 2, 1999	Harold Daggett, President Local 1804 International longshoremen's Association 5000 Westside Ave. North Bergen, N.J. 07047
May 28, 1999	Mr. Pat Falcetti Metropolitan Marine Maintenance Contractors Association, Inc. 301 Route 17N, 7th Floor Rutherford, N.J. 07070
September 14, 2000	Harold Daggett, President Local 1804-1 International longshoremen's Association 301 Route 17 North 5000 Rutherford, N.J. 07040-2575

Copies of these documents are annexed hereto as Exhibit Z.

45. In addition to others, the following mailing took place in furtherance of the fraudulent award of the Local 1922 Welfare Fund's mental healthcare contract to Compsych:

Approximate Date of Mailing	Addressee
March 8, 1999	Art Coffey, President Local 1922 International Longshoremen's Association 1610 Port Blvd. Miami, FL 33132

A copy of this letter is annexed hereto as Exhibit AA.

46. The following letter was transmitted by facsimile, also in furtherance of the fraudulent award of the Local 1922 Welfare Fund's mental healthcare contract to Compsych:

Approximate Date of Transmission	Addressee
August 23, 1999	Elpidio J. Ruiz, Fund manager International Longshoremen's Association Local 1922, Health and Welfare Fund 1610 Port Boulevard Miami, FL 3312

A copy of this letter is annexed hereto as Exhibit BB.

47. The following letter was transmitted by facsimile in furtherance of the fraudulent award of the Southeast Florida Ports Welfare Fund's mental healthcare contract to Compsych:

Approximate Date of Transmission	Addressee
May 11, 1999	Paul Flemming, Sr. VP Health management Center, Inc. 270 Farmington Avenue, Suite 210 Farmington, Connecticut 06032

A copy of this letter is annexed hereto as Exhibit CC.

48. Certain of the authors and recipients of these letters are Defendants herein (Cashin, Gleason, Bowers, and Coffey) and others have been convicted of crimes related to these very schemes (Cernadas). As detailed above, none of them have been deposed, and their

understanding of the mailings, calls and fax transmissions, and their roles in the schemes alleged in the Complaint, are appropriate areas of inquiry.

49. Barone's testimony and the evidence adduced thus far not only provides evidentiary support for the allegations in the Complaint, but it also punctuates the need for deposition discovery. None of the witnesses and Defendants discussed herein, with the exception of Barone, has been deposed. Yet, as set forth above, they have evidence which is highly relevant and material to the allegations of the Complaint. This evidence, if consistent with that already developed, emphatically contradicts the arguments made by the Defendants in their motions. The United States should not be denied the opportunity to depose Cashin, Coffey, Gleason, Bowers, Daggett, Owens, Holland, Knott, Capri, Catucci, Perez, and others in order to develop the facts discussed above. The United States should be permitted to depose the Defendants and witnesses; it should be permitted to inquire about Cashin's relationship with Barone and the ILA Defendants; it should be allowed to ask questions concerning Daggett's election to the position of ILA Assistant Genera Organizer, the MILA PBM scheme, and the award of the mental health care contracts to ComPsych. In light of Barone's testimony and the other evidence of record, the United States' request for discovery is firmly rooted in evidence which establishes the Defendants' involvement in the RICO conspiracies alleged in Complaint.

Dated: Brooklyn, New York
December 12, 2006

s/
Kathleen A. Nandan

Summary of Exhibits Annexed to the Nandan Declaration

Exhibit	Description
A	Docket Sheet for United States v. ILA, et al., CV-05-3212
B	Order dated February 22, 2006
C	Letter from United States dated February 23, 2006
D	Letter from United States dated March 8, 2006
E	Letters from ILA, MILA, and the METRO Defendants dated March 17, 2006
F	Letter from United States dated March 24, 2006
G	Order dated March 24, 2006
H	Excerpts of Barone Dep.
I	Letters from ILA, MILA and the METRO Defendants dated June 5, 2006
J	Letter from United States dated June 5, 2006
K	Order dated June 6, 2006
L	MILA's Rule 26 Disclosure
M	METRO-Defendants' Rule 26 Disclosure
N	ILA's Rule 26 Disclosure
O	Cashin 302s
P	Coffey 302s
Q	Joseph Ragusa Job Description
R	METRO officers and trustees
S	Jerome Brancato Job Description
T	Proposed Organizational Chart
U	Mason Tenders Demand for Relief
V	Mason Tenders Consent Decree Excerpt
W	Letter from USMX
X	MILA/Compsych Mailings

Exhibit	Description
Y	METRO/GPP/VIP Mailings
Z	METRO/Compsych Mailings
AA	1922 Compsych Mailing
BB	1922/Compsych Facsimile
CC	SE FL/Compsych Mailing